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REMARKS

In the outstanding office action referenced above, the examiner has rejected claims 1-5, 11 and 12 under 35 USC §112, second paragraph. In particular, with regard to claims 1 and 11, the examiner points out that the limitation “the retaining members” lacks sufficient antecedent basis. Accordingly, Applicant has appropriately amended both of these claims to change the term “retaining members” to read “retaining member,” to accord with the recitation made in line 3 of both claims. Accordingly, these amendments have overcome this rejection and Applicant respectfully requests the examiner to withdraw it.

In regard to claim 12, the examiner has made a similar rejection, pointing out that the limitation “said chamber” in line 4 lacks antecedent basis. Accordingly, Applicant has amended line 4 to change “said chamber” to read “said container,” in accord with the language used in line 2 of claim 12. Again, Applicant submits that this amendment overcomes the rejection and requests the examiner to withdraw it.

With regard to rejections made over prior art, the examiner has rejected claims 1-12 under 35 USC §102(b) as anticipated by U.S. Patent No. 4,607,755 to Andreozzi. According to the examiner, Andreozzi discloses a combination drinking container and straw which comprises a container, a straw retaining member 40 formed in a wall of the container and a straw (flexible straw 34 and tube 20), a first downwardly extending end of the straw being in fluid communication with a chamber of the container and a second upwardly extending end. According to the examiner, “The container is closed by a lid and a straw extends through an aperture in the lid to form a hinge.”

Applicant has carefully reviewed the disclosure of the Andreozzi patent and respectfully disagrees with the examiner’s reading of the reference. In particular, the Andreozzi straw and container differs from that claimed by Applicant in several important

respects. Andreozzi discloses a container including a tube 20 “joined integrally to the inner wall of the body portion 16 of the container 12” (Column 2, lines 33-35). One end of the tube terminates proximate the bottom wall 14 of the container 12, and the uppermost end of the tube extends somewhat above the lip 18 of the container. (Column 2, lines 39-47). The disclosure does say that the upper end is “exposed to provide for drinking the liquid from the container or for receiving a drinking straw thereon as will be described.” (Column 1, lines 45-47).

While the depicted embodiment shows the upper end of the tube 20 extending barely beyond the lip of the container and merely forming an attachment location for the flexible straw 34, the disclosure is broad enough to encompass an integrally formed tube 20 whose upper end could extend sufficiently beyond the lip of the container in order to provide a drinking end wherein beverage could be sipped from the container through the tube 20. However, such a structure would not be Applicant’s invention because an integrally formed tube of this configuration would not have at least part of its configuration defined by the configuration of at least one straw retaining member formed in the wall of the container, as required by all of the pending claims. Accordingly, this disclosed but not depicted embodiment of Andreozzi’s drinking vessel does not anticipate any of the claims of Applicant’s invention.

In the embodiment Andreozzi actually depicts, the upper end 23 of the tube 20 forms an attachment area for an inner end 36 of flexible straw 34, a straw “formed with a continuous series of bellows-like pleats throughout substantially the length thereof that enables the straw to be easily bent to a variety of positions.” (Column 3, lines 8-14). Straw 34 “also includes an outer free end 38 that in the position of use is extended substantially beyond the confines of the container 12.” The description goes on to state:

In the position of non-use, the flexibility of straw 34 enables it to be moved into encircling relation around the exterior surface of the container 12, the free end 38 being received in a clip 40 that is secured to the exterior surface of the body portion 16 of the container 12 in vertically spaced relation with respect to the bracket 26. (Column 3, lines 17-23)

When someone wishes to drink from the container, they unclip the free end 38 from the clip 40 and bend the straw 34 such that the free end will be in comfortable relationship to the mouth of the user. The disclosure further goes on to describe a valve which closes when no suction is applied to the straw and opens when the drinker applies suction, thereby resulting in a spill-proof container particularly suitable for use by children in a moving vehicle because the valve end arrangement of the tube, straw and vessel tend to prevent spillage of liquid from the container.

Accordingly, in the depicted embodiment, the “straw” is actually two separate pieces, an integral tube 20 and a flexible straw 34 attached thereto. Even if straw 34 were formed integrally with tube 20 in Andreozzi (which there is no suggestion of in the actual reference), this still would not achieve Applicant’s invention as presented in any of the pending claims. The examiner will note that all of the independent claims (claims 1, 6, 11 and 12) require that the straw have a first end in fluid communication with the chamber of the container and “a second end which extends upwardly from the container so that liquid may be sipped through from the container.” All of the independent claims also require that “at least part of the configuration of the straw is defined by the configuration of the retaining member.”

In the embodiment described and disclosed in the Andreozzi reference, the free end 38 of flexible straw 34 is retained by the clip 40, and perhaps one could argue that this meets the limitation of a portion of the configuration of the straw being defined by the retaining member. However, when Andreozzi’s straw 34 is in this position with its free end retained in

the clip, the free end is NOT “a second end which extends upwardly from the container so that liquid may be sipped through from the container.” In actual fact, liquid may be sipped from Andreozzi’s vessel through the straw 34 only when the free end is detached from the container and the configuration of the straw manipulated so that it will reach the user’s lips. However, as soon as the free end of the straw 34 is detached from the clip 40, clearly the configuration of at least part of straw 34 is no longer defined by the configuration of the retaining member.

Thus, there is no way in which the Andreozzi reference discloses a straw and container which meets all of the limitations of the present invention. To summarize, if the integral tube 20 is extended far enough above the container lip to present a sipping end to the user, the resultant vessel does not meet the limitation of the retaining member defining the configuration of a portion of the tube. On the other hand, if the separate straw 34 is attached to the tube 20, then it necessarily has one of either two configurations, neither of which meet the limitations of the claims. In the first configuration, its free end is retained in the clip such that the free end does not extend upwardly from the container so that liquid may be sipped through it. On the other hand, when the free end of straw 34 is released from the clip, then the configuration of straw 34 is no longer defined in part by the configuration of the clip.

Accordingly, Applicant submits that none of the present claims are anticipated by the Andreozzi reference when properly read and respectfully requests the examiner to withdraw the §102 rejection.

With particular reference to the pending claims that contain the recitation of a portion of the straw which extends through an aperture in a lid closing the container to form a hinge, Applicant respectfully finds no disclosure in Andreozzi which even begins to meet this limitation. Andreozzi discloses no structural member which functions as a hinge and there is

no mention in the disclosure of the lid being hinged to the container. If we examine Figure 2 of Andreozzi, we do see a lid which does have an aperture with the integrally formed tube 20 extending through it. However, we also see flexible portion 34 attached to the upper end 23 of tube 20 and this attachment would obviously prevent movement of lid 24 with respect to the container. Accordingly, this failure to describe any kind of hinge mechanism formed by the straw constitutes a separate and additional reason why at least claims 5, 10 and 12 are not anticipated by Andreozzi.

Additionally, the examiner has rejected claims 1-12 under 35 USC §103(a) as obvious over the combination of Andreozzi in view of U.S. Patent No. 5,048,705 to Lynd et al. The examiner states that “This rejection is made in the event that the straw can’t include portions 34 and 20 and in the event that the lid can’t be slid upwardly past inner end 36 of straw 34.” Apparently, the examiner, himself, realized that Andreozzi, alone, does not disclose any kind of functional hinge formed by the straw, and that attempting to manipulate the lid over the “loop” portion of the tube/straw combination would be impossible. Accordingly, he cites Lynd for disclosing that the two piece straw assembly of Andreozzi could be formed in one piece “in order to move the straw connection away from the rim of the container so that the rim doesn’t interfere with the straw connection and in order to provide a friction fit between the straw and aperture in the lid to maintain removability and establish a fit which is substantially splash and spill proof.

However, this obviousness rejection is fatally flawed in two respects. First of all, there is nothing in the Lynd reference which discloses a straw that has part of its configuration defined by a retaining member. Accordingly, nothing in the Lynd et al. reference speaks to the deficiency already described in Andreozzi of a straw which meets all of the limitations of the pending claim, namely that the straw have an upper end extending

above the container so that it may be sipped from, while also having part of its configuration defined by a retaining member. Therefore, combining Lynd et al. with Andreozzi would not achieve the invention of any of the pending independent claims, or the claims dependent thereon.

Furthermore, with regard to those claims specifically directed to a straw with a loop portion configured as a hinge extending through an aperture in the lid so that the lid may be manipulated on and off via the hinge, there is nothing in Lynd et al. which even begins to suggest such a hinge. Of course, there is also nothing in Andreozzi which suggests such a hinge. Accordingly, combining these two references in the manner suggested by the examiner to achieve Applicant's invention as defined at least in claims 5, 10 and 12 represents nothing more than impermissible hindsight on the part of the examiner. It should be noted that none of the supposed motivations mentioned by the examiner at the bottom of page 3 of the outstanding office action have anything to do with the problems which Applicant's present invention attempts to solve, namely providing a combination drinking container and drinking straw in which the straw is attached to the container in a secure, semi-permanent manner, which combination presents an aesthetically pleasing, integrated and easy-to-use design.

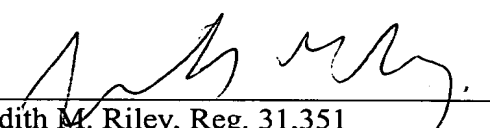
Since Lynd does not provide sufficient teachings to overcome the deficiencies of the Andreozzi disclosure described in detail above, combining these two references cannot possibly achieve Applicant's invention as claimed in any of the pending claims. Furthermore, there is nothing in any other prior art of record or of which Applicant is aware that would cure this deficiency. Accordingly, the present claims are neither anticipated by nor obvious over Andreozzi and Lynd et al. taken either separately or in any combination

thereof. Hence, the claims contain patentable subject matter and are allowable over the prior art. Applicant respectfully requests expeditious notice thereof.

Should the examiner have any questions or comments, Applicant's representative may be reached by telephone at the office number below.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with Markings to Show Changes Made."

Respectfully submitted,


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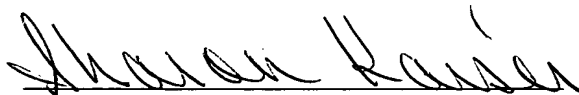
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 1 has been amended as follows:

- 1 1. (Amended) A combination drinking container and straw comprising:
2 a container having a wall enclosing a chamber, a bottom, an open top, and at
3 least one straw retaining member formed in said wall; and
4 a straw disposed in the at least one retaining member, the straw having a first
5 end which is in fluid communication with the chamber of the container and a second
6 end which extends upwardly from the container so that liquid may be sipped through
7 from the container, wherein at least part of the configuration of the straw is defined by
8 the configuration of the retaining [members] member.

Claim 11 has been amended as follows:

- 1 11. (Amended) A combination drinking container and straw comprising:
2 a container having an outer wall, a bottom, an open top, and at least one straw
3 retaining member disposed in an outer surface of the outer wall;
4 a lid for closing the top of the container, the lid having an aperture formed
5 therethrough;
6 a straw disposed in the at least one retaining member, the straw having a first
7 end which extends into the container to terminate proximate the closed bottom thereof
8 and a second end which extends upwardly from the container so that liquid may be
9 sipped through from the container, wherein the configuration of the straw is defined
10 by the configuration of the retaining [members] member; and

11 a loop formed by the straw proximate the container top such that, when said
12 straw extends through said aperture, said loop hinges said lid onto said combination
13 even when said lid is removed from said container.

Claim 12 has been amended as follows:

1 12. (Amended) A combination drinking container and straw comprising:
2 a container having an open top, a lid configured to fit on said container to
3 close said open top, said lid including an aperture formed therethrough, and a straw, a
4 first portion of which extends from said [chamber] container and through said lid
5 aperture and a second portion of which is attached to said container and terminates in
6 a sipping end, wherein said straw functions as a hinge for said lid, retaining said lid
7 when said lid is removed from said cup.